A **Charterfield Development Corp Sdn Bhd (now known as PJ Workers Camp Sdn Bhd) v Duta Arif Sdn Bhd & Ors**

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02–732 OF 2005
LOW HOP BING, ZAINUN ALI AND HASAN LAH JJCA
21 FEBRUARY 2008

C *Civil Procedure — Preliminary objection — Notice to opponent — Application by way of notice of motion — Failure to submit draft index for approval by respondent counsel — Whether grounds to strike out appeal*

D The respondents filed a notice of motion, ie encl (12a) to strike out the appellant's appeal on the ground that the appellant had failed to submit the draft index for approval by the respondents' counsel. However, the respondents contended that they have no objection if the appeal was to be
E heard on substantive merits.

Held:

F Enclosure (12a) was not pursued further and the appeal ordered to be heard on substantive merits on a date to be fixed by the court (see para 3).

[Bahasa Malaysia summary

G Responden telah memfailkan satu notis usul, iaitu lampiran (12a) untuk membatalkan rayuan perayu atas alasan bahawa perayu telah gagal untuk mengemukakan draf indeks untuk persetujuan oleh peguam responden. Walau bagaimanapun, responden berhujah bahawa mereka tidak membantah jika rayuan tersebut didengar atas merit substantif.

H

Diputuskan:

Lampiran (12a) tidak diteruskan dan rayuan diperintahkan didengar atas merit substantif pada tarikh yang akan ditetapkan oleh mahkamah (lihat
I perenggan 3).]

Notes

For cases on notice to opponent, see 2(3) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5840–5848.

Appeal from: Writ of Summons No 22–59 of 2003 (High Court, Kuching)

Sunny Si (Roland Thomas with him) (Besar & Talip Tudin Advocates) for the appellant.

Tai Choi Yu (Tai Choi Yu & Co) for the respondents.

Low Hop Bing JCA (delivering judgment of the court):

ON ENCLOSURE (12a)

[1] This application by way of notice of motion in encl (12a) was fixed for hearing before us on 2 April 2007. It was filed by the respondents-applicants who were represented by learned counsel Mr Tai Choi Yu.

[2] The application seeks an order to strike out the appellant's appeal on the ground that the appellant has failed to submit the draft index for approval by the respondents' learned counsel.

[3] However, in the course of submissions, Mr Tai informed us that he had no objection if the appeal was to be heard on substantive merits. Hence, encl (12a) before us was not pursued further.

[4] That being the case, the appellant's learned counsel Mr Sunny Si (Mr Roland Thomas with him) responded that he was not inclined to ask for costs.

[5] In view of the above, we dismissed encl (12a) and made no order as to costs. The appeal was then adjourned to 2.30pm on the same day for hearing and determination on substantive merits.

[6] In the afternoon, at the outset of the hearing of the appeal, Mr Tai told us that he was constrained to apply for postponement, as he would have to be in Sibu for the hearing of another matter before the High Court judge on 4 April 2007, to which Mr Si had no objection.

[7] In deference to Mr Tai's request for postponement, we had accordingly ordered that the hearing of the appeal on substantive merits be postponed to a date to be fixed.

[8] My learned sister Zainun Ali JCA and my learned brother Hasan Lah JCA has read this judgment in draft and has expressed their agreement with it.

Order accordingly.

Reported by Navit Kaur Randhawa